

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

TRUE THE VOTE, *et al.*

PLAINTIFFS

vs.

Civil Action No. 3:14-cv-532-NFA

DELBERT HOSEMANN, *et al.*

DEFENDANTS

**MOTION FOR SUMMARY JUDGMENT
FILED BY RANKIN COUNTY, MISSISSIPPI ELECTION
COMMISSION**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in conformity with this Court's Order [Doc. 46], the Rankin County, Mississippi Election Commission ("RCMEC"), through counsel, moves the Court for Summary Judgment and in support thereof shows the Court as follows:

FACTUAL SUMMARY

1. Plaintiffs allege that the Defendant, Rankin County, Mississippi, Election Commission violated the public disclosure provisions of the National Voter Registration Act ("NVRA") by refusing to provide access to election records following the June 3, 2014, and June 24, 2014, U.S. Senate Primary election and runoff election.

2. Plaintiffs allege [Doc. 58, Paragraph 45] that “...immediately following the election in July 2014 ...” they requested election records from “... Rankin County ...” and that they did so, “...pursuant to NVRA Section 8(i)(1).”

3. This Court conducted a hearing on Plaintiffs request for temporary injunctive relief on July 24, 2014. At the hearing, testimony was adduced establishing that Plaintiffs made all requests for election documents to Rankin County Circuit Clerk, Rebecca N. Boyd, who is not a member of the RCMEC.

4. Following the hearing, Plaintiffs filed multiple documents purporting to be “incident reports” [Doc. 49] allegedly documenting Plaintiffs’ interaction with various Defendants. With the exception of one alleged incident report, all such reports related to Rankin County, Mississippi, identify Circuit Clerk, Rebecca N. Boyd, as the individual associated with Rankin County, Mississippi with whom the Plaintiffs interacted. One alleged incident report identified as being the report of Michael Rowley suggests that he made a request for “...absentee ballot applications and envelopes...” from the Chairman of the RCMEC, Leslie Lewis, on July 7, 2014, some two weeks following the runoff election of June 24, 2014. [Doc. 49-2, pp. 30-31].

5. Plaintiffs have alleged no interaction with any persons associated with Rankin County, Mississippi, concerning a request for access to election documents

at any time earlier than the Thursday prior to the June 24, 2014, Runoff Election. [See, Evidentiary Hearing Tr. P. 98, ll. 19-25].

6. It is without dispute that Plaintiffs' first notice of an alleged violation of the NVRA by RCMEC was provided on July 15, 2014, when a Summons and Complaint was served upon Leslie Lewis as Chairman of the RCMEC. [Doc. 37].

ARGUMENT

7. This Court is well familiar with the applicable standard for determining Motions for Summary Judgment as set forth in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) which are designed to secure the just, speedy and inexpensive determination of every action.

8. Plaintiffs failed to provide any Defendant, including RCMEC, with notice of an alleged violation of the NVRA prior to the filing and service of a Summons and Complaint. Pursuant to 42 U.S.C. § 1973gg-9(b), Plaintiffs were required to notify Mississippi's Chief Election Official of an alleged violation of the NVRA by RCMEC at least 30 days, or potentially as much as 90 days, before filing suit. By failing to provide the required notice of violation, Plaintiffs have not satisfied the prerequisite to maintaining a private right of action under the NVRA. See, *Broyles v. Texas*, 618 F.Supp. 661 (S.D. Tex. 2009).

9. RCMEC incorporates herein by reference the motions for summary judgment and briefs submitted by other Defendants in connection with the issues

of law not addressed herein directly (such as whether the documents requested by Plaintiffs are records subject to NVRA and whether NVRA allows redaction of all or a portion of said records) rather than restating those arguments herein.

DATED, this the 6th day of August, 2014.

Respectfully submitted,
RANKIN COUNTY, MISSISSIPPI
ELECTION COMMISSION

BY: /s/ CRAIG L. SLAY, MSB #10272

Rankin County Board of Supervisors
211 E. Government Street, Suite A
Brandon, Mississippi 39042
Telephone: 601.825.1475

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served, via this Court's ECF filing system, a copy of the foregoing on all counsel who have entered their appearances in this action to date.

SO CERTIFIED, this the 6th day of August, 2014.

/s/ Craig L. Slay. MSB #10272